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SUBJECT: LAND IN CAMBODIA, PART II: LAND CONCESSIONS AND URBAN DEVELOPMENT

REF: A) PHNOM PENH 60, B) 08 PHNOM PENH 1003, C) PHNOM PENH 276, D)
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SENSITIVE BUT UNCLASSIFIED

THIS IS THE SECOND OF THREE CABLES ON LAND ISSUES IN CAMBODIA. FOR PART I, SEE REF A.

¶11. (SBU) SUMMARY. Land concessions, or government-approved leases of state land, are among the primary tools the Royal Government of Cambodia (RGC) uses to encourage economic development. The 2001 Land Law includes size, time, and use limits on Economic Land Concessions (ELCs) designated for industrial agricultural exploitation, but investors have found legal loopholes and take advantage of government connections to skirt these rules. The RGC has recently attempted to crack down on ELC abuse, but its efforts may be too little too late. Use, Development, or Exploitation (UDE) land concessions allow private investors to develop public interest enterprises the RGC is unable or unwilling to undertake itself, and there are few rules governing their implementation. The RGC uses UDE concessions for urban development initiatives, despite questions about how some of those initiatives fit the definition of "public interest".

¶12. (SBU) Environmental impact assessments (EIAs) should provide a check on unsustainable land concessions, but RGC capacity limitations and a lack of guidelines hinder the effectiveness of EIAs. Behind the growing number of land concessions in Cambodia lies a growing wave of foreign investment, which is necessary for the country's economic growth but puts increasing pressure on the RGC to promote development by bending the rules designed to protect Cambodia's land and its citizens. The intense emphasis on development through land concessions and the weak private land titling system in Cambodia (Ref A), are the two overarching factors that have contributed to the rise of land disputes over the past several years. END SUMMARY.

CATEGORIES OF LAND CONCESSIONS

¶13. (U) The 2001 Land Law defines land concessions as leases under which a competent authority grants a recipient the right to use state land for a particular purpose. The RGC uses concessions extensively to push economic growth and development initiatives. The Land Law defines three categories of land concessions: 1) Social Land Concessions, given to individuals or families for residence and personal farming use (Ref A); 2) Economic Land Concessions, granted to private companies for agro-industry ventures; and 3) Use, Development and Exploitation (UDE) land concessions, typically used to develop an enterprise that the state requires but is unable to, or prefers not to, undertake itself, such as construction of an airport or hydropower dam.

ECONOMIC LAND CONCESSIONS (ELCs)

14. (U) The Land Law designates ELCs for industrial agricultural exploitation and sets specific size and time limits for their application. ELCs legally cannot be larger than 10,000 hectares and are limited to maximum lease terms of 99 years, though these may be renewable. By law, ELCs can only be created on state private land (Ref A) and cannot be converted to ownership. Concession grantees can exploit and defend their leased land, but they cannot alter the land in any way that will leave it unusable when the concession lease expires. A range of crops may be grown on ELCs, but the RGC is currently prioritizing rubber plantations.

15. (SBU) The Ministry of Agriculture, Forestry and Fisheries (MAFF) oversees a Secretariat that manages the creation and monitoring of ELCs. According to Undersecretary of State Ith Nody, Head of the ELC Secretariat, there are currently 65 companies with ELCs, totaling 912,275 hectares (about 2,254,231 acres). However, until recently provincial governors could also grant ELCs under 1,000 hectares, which are not included in MAFF's records. The Community Legal Education Center (CLEC) noted for example that Mondulkiri government documents alone list 25 concessions in pending or operational status at a total of 144,800 hectares (about 357,800 acres). MAFF records only list two ELCs in Mondulkiri, one of which shows a status of "canceled". Ith Nody said that the central government had now banned provincial and local governments from granting ELCs, and that MAFF was in the process of compiling a list of all concessions in the country.

PROCESS FOR SECURING AN ECONOMIC LAND CONCESSION

16. (U) According to MAFF, the official process for securing an economic land concession is as follows:

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- a. The prospective grantee registers its company name with the Ministry of Commerce.
- b. The prospective grantee submits a concession application to MAFF, including company overview, proposed activities, and capital information.
- c. The company locates and surveys the prospective concession land, in cooperation with local and provincial authorities. The company creates a map of the area and submits it to MAFF.
- d. If MAFF approves the map, the company is then required to conduct an environmental impact assessment (EIA).
- e. If the Ministry of Environment (MOE) approves the EIA, MAFF sends an interministerial team to the proposed site to conduct a forest inventory, a socio-economic impact survey, and a soil survey to determine if the proposed crops will grow in the area.
- f. The interministerial team then creates a new concession map based on its findings and issues a recommendation to proceed with or cancel the proposed concession.
- g. The Council of Ministers issues an agreement in principle to the concession.
- h. An ELC Secretariat team visits the proposed site and finalizes the concession map.
- i. MAFF drafts a contract with the investor and registers the concession with the Ministry of Land Management, Urban Planning and Construction (MLMUPC).
- j. The investor creates a master implementation plan for development of its concession area, which becomes a legally binding document.

ECONOMIC LAND CONCESSIONS IN PRACTICE

17. (SBU) As is the case in securing a private land title (Ref A), the official process for securing an ELC is often not followed, according to NGOs that monitor land issues. Investors frequently find ways to skirt the rules governing ELCs, usually by exploiting

loopholes in the Land Law. For example, Yous Pheary, head of the Cambodian NGO Community Economic Development (CED) in Kratie, described how companies in his province establish multiple subsidiaries, each of which lease adjacent land parcels, creating ELCs larger than the 10,000 hectare limit. He cited one case where a Chinese agricultural company created six subsidiaries to establish a roughly 50,000 hectare ELC near the town of Sambor. The UN Office of the High Commissioner for Human Rights (UNOHCHR) investigated the company and found that five of the subsidiaries even shared the same registered office.

¶18. (SBU) This legal loophole is openly discussed among investors and developers. Asia Real Property (ARP), a real estate consulting firm in Phnom Penh, advertises everything from 11,000 hectare concessions in Mondulkiri Province to 46,000 hectare concessions in Kampot, and the company's brochure emphasizes its close connections to the RGC. When asked how ARP was able to advertise ELCs above the legal size limits, Saroeun Souch, ARP's Managing Director, told Poloff that as long as the concessions are broken into 10,000 hectare parcels and are leased under different company names, the RGC would not care if those companies ultimately rolled up to a single entity. (NOTE: Saroeun Souch was very eager to push ELCs, saying repeatedly that investors had to "act now" before available land disappeared, and he even tried to offer Poloff a "finder's fee" for bringing in U.S. investors. Despite the lengthy process for establishing ELCs described by MAFF, Saroeun Souch said he could secure an ELC for an investor in four months. END NOTE.)

¶19. (SBU) In some cases, companies begin work on their concessions before their leases are finalized. For example, in December 2008 an ELC belonging to Cambodian real estate company The Khao Chhuly Group became the center of a land dispute in Pech Chreada District, Mondulkiri Province, when Khao Chhuly workers began to clear forested areas claimed by ethnic minority villagers for a rubber plantation. (NOTE: The company's owner, Khao Chhuly, is the father-in-law of former Public Works Minister and current Vice-Chairman of the Council for the Development of Cambodia, Sun Chanthol. END NOTE.) Although the company had begun preparing the land, the concession was not yet registered on MAFF's list of approved ELCs. Ith Nody told Poloff that the Khao Chhuly ELC was still in the "exploratory phases". When asked about villager accusations that Khao Chhuly bulldozers were already clearing land, Ith Nody shifted focus to human rights NGOs, accusing them of inciting villagers to "cause problems" when they learn an ELC is in development. (NOTE: An ADHOC representative who had been monitoring the case at the time of the clash told Poloff that he was

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trying to encourage dialogue between the villagers and the company. END NOTE.)

CHANGING LAND STATUS TO ACCOMMODATE THE LAW

¶110. (U) The Land Law defines two categories of state property: 1) state public property (areas of natural origin such as lakes or islands, general or public use, conservation areas, historical or cultural patrimonies, or royal properties); and 2) state private property (any property belonging to the state that does not fall under the definition for state public property). Although the Land Law stipulates that ELCs can only be granted on state private land, there are mechanisms in place for the RGC to reclassify state public land to state private land to facilitate an ELC. A 2005 sub-decree on state land management allows a ministry or provincial authority to publicly request reclassification of state public land to state private land, and vice versa. If the provincial state land management committee approves the request, the requesting ministry or authority can draft a sub-decree reclassifying the state land for the Council of Ministers to issue. For example, in January 2009, the RGC issued a sub-decree reclassifying 5,200 hectares of forest preserve area in Samlaut District, Battambang Province, to create an ELC for the Roth Sambath Company.

CLOSER MONITORING OF ELCs

¶11. (SBU) In February 2009, MAFF announced that it would undertake a nationwide evaluation of ELCs to identify non-compliance with lease terms and master implementation plans. Citing a common NGO complaint, Ith Nody acknowledged that in some cases, grantees simply clear their concession lands, sell the timber they collect, and leave the lands empty. As the goal of ELCs is to promote economic development, MAFF has started to treat these cases as violations of lease agreements. In late 2008, MAFF revoked five ELC licenses over failure to meet development plans, and Ith Nody said that MAFF planned to audit 40 more ELCs this year. He also explained that the ELC Secretariat was negotiating with nine companies that leased ELCs over 10,000 hectares to reduce their holdings to within the legal size limits. Civil society groups note that while closer monitoring of ELCs is necessary, MAFF's efforts are too late to prevent unnecessary deforestation on those lands already leased.

USE, DEVELOPMENT, OR EXPLOITATION (UDE) LAND CONCESSIONS

¶12. (SBU) The 2001 Land Law provides few guidelines for UDE concessions. There are no size limits, and UDE concessions can be granted on state public land, unlike economic and social land concessions. For example, many of Cambodia's hydropower projects are located within protected areas such as national parks (Ref B). In another recent high-profile example of state public land leasing, the Ministry of Environment (MOE) signed over management of Bokor National Park (140,000 hectares, or about 346,000 acres) to Cambodian conglomerate Sokimex, which is developing a multi-million dollar resort within the park boundaries. (NOTE: The resort appears to have an eco-tourism component. END NOTE). Another potential UDE concession is a proposed 100,000 hectare game hunting park in Ratanakiri Province, approved by the Council of Ministers on February 27.

¶13. (SBU) The Land Law includes some regulations on the general leasing of state public land, namely that authorization to occupy state public land must be "temporary, precarious, and revocable". A Land Law sub-decree further stipulates that leases on state public land must be no longer than 15 years. However, the RGC only loosely applies these guidelines to UDE concessions. The Sokimex concession in Bokor National Park is a 99-year lease. Many of the proposed hydropower dams are managed under 40-year lease agreements (Ref B).

¶14. (SBU) When UDE concessions are granted on state private land, there are even fewer rules governing them. For example, NGOs tried to use the state public land leasing guidelines to challenge the legality of the Phnom Penh Municipality's concession of Boeung Kak Lake to a private company for development. A legal analysis by the Centre on Housing Rights and Evictions (COHRE) suggested that the 99-year concession violated state public land leasing limits, and that the conversion of a natural rain catchment area into a commercial center violated the usage definitions for state public property (Ref A). In response, the RGC issued a sub-decree converting the lake to state private land, which does not carry the same leasing restrictions, removing the NGOs' legal arguments.

WHAT IS "PUBLIC INTEREST"?

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¶15. (SBU) Human rights NGOs have expressed concern that the use of UDE concessions will increase as the RGC pushes to develop urban areas, forcing disputes between poor communities and wealthy investors. In Phnom Penh, municipal government representatives argue that any kind of economic development, even the construction of a new shopping mall, is in the public's interest, rendering concessions of state land for seemingly private ventures necessary. The Boeung Kak Lake case is the most visible example of this reasoning. The concession grantee, Cambodian firm Shukaku Inc., will completely fill the lake and reportedly build a shopping and cultural center. Communities living along Phnom Penh's old railway lines face similar threats from a concession granted to local developer Hassan Cambodia Development Limited to build office space

and a commercial center.

ENVIRONMENTAL IMPACT ASSESSMENTS (EIAs)

¶16. (SBU) EIAs are required for all major investments and infrastructure development, including ELCs and UDE concessions, and they could provide a check on unsustainable land exploitation. However, the EIA process is beset with challenges. The construction firms responsible for the projects are also responsible for the EIAs for those projects, a clear conflict of interest resulting in subjective analyses (Ref B). Puth Sorithy, Director of the EIA Department at the MOE, told Poloff that his department lacks the technical and human resource capacity to effectively evaluate the flood of EIAs that are regularly submitted. The ADB funded training on tools for conducting EIAs in the 1990's, but now focuses its efforts on environmental awareness activities.

¶17. (SBU) Because there is no standard template or process for EIAs, the assessments and review process can vary in quality from project to project. For example, environmental and human rights NGOs widely criticized the August 208 EIA for the Boeung Kak Lake concession as being inaccurate and vague. A March 2009 assessment by Australian drainage engineers refuted the August EIA conducted by Shukaku, finding that filling the lake would eliminate a major rain catchment area, leading to significant flooding issues. Bunra Seng, Country Director for Conservation International, described another scenario in which he received a lengthy and detailed EIA for a hydropower dam in the Cardamom Mountains, but was only given two days to review and comment on it. Suwanna Gauntlett, Country Director for Wildlife Alliance, explained how she planned to hire a technical expert to conduct an unofficial EIA for a satellite city project in Koh Kong Province, to ensure the project planners had an accurate assessment.

INCREASING FOREIGN INVESTMENT

¶18. (SBU) A growing wave of foreign investment lies behind the increasing number of land concessions in Cambodia. Chinese grants and soft loans have driven much of the recent progress on hydropower (Ref B), and some Middle Eastern countries have increased or plan to increase funding for agricultural sector development in exchange for leases to food supplies. For example, Kuwait's premier pledged to give the RGC a \$546 million loan related to agricultural production during an August 2008 visit to Cambodia. Kuwait will also fund the development of a 40 MW hydropower dam in Kampong Thom Province. The government of Qatar is reportedly negotiating a \$20 million joint venture with a Cambodian firm to lease 10,000 hectares of land for rice cultivation in Stung Treng Province, as part of a reportedly larger \$200 million planned investment in the Cambodian agricultural sector.

COMMENT

¶19. (SBU) There is no question that if the RGC wants to develop its agricultural sector and general infrastructure, it will have to make land available for private investors, who have more financial and technical resources. Ideally the RGC would focus on reducing corruption, improving inter-ministerial coordination, and streamlining bureaucratic bottlenecks to make the land concession process easier for investors. Instead, the domestic drive for development seems to be pushing the RGC to pursue a more short-sighted policy of bending rules and skipping processes designed to ensure environmentally sustainable and socially responsible growth in order to quickly give investors access to land.

¶20. (SBU) Decreasing foreign direct investment in the construction and agricultural sectors due to the global economic crisis and the subsequently lower real estate prices (Ref C) have temporarily eased the intense land speculation seen in previous years. However, domestic developers continue to pursue projects that have led to

some of the more high-profile disputes in the country, such as the Dey Krahorm (Ref D), Group 78, Boeung Kak, and Borei Keila cases. Economic development under the current mode of granting land concessions, combined with the weak private land ownership system in Cambodia (Ref A), will continue to contribute to a rise in land disputes between developers, the government, and affected communities.

The next cable in this series will focus on the fallout of land disputes, such as forced evictions, land grabbing and scams, and land degradation issues.

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